

STATE OF MICHIGAN
COURT OF APPEALS

PATRICIA L. LAWRENCE, Trustee of the POUR
OVER TRUST OF PATRICIA L. LAWRENCE,
HAROLD E. SANGER, JR., Trustee of the
HAROLD E. SANGER JR. LIVING TRUST, and
JULIA BENSON SANGER, Trustee of the JULIA
B. SANGER LIVING TRUST,

Plaintiffs-Appellants,

v

ROSS TOWNSHIP, STATE TREASURER, DNR
DIRECTOR, LAWRENCE CARTER, RICHARD
E. CLARK, NETTIE L. CLARK, JOHN F.
DILWORTH, DEBORAH A. DILWORTH,
THOMAS G. WOOLWORTH, CAROL J.
WOOLWORTH, EDWARD H. BARKLEY, and
MARIAN H. BARKLEY,

Defendants-Appellees,

and

GULL LAKE SEWER AND WATER
AUTHORITY, KALAMAZOO COUNTY
BOARD OF ROAD COMMISSIONERS,
KALAMAZOO COUNTY DRAIN
COMMISSIONER, CONSUMERS ENERGY
COMPANY, VANBUREN COUNTY
CABLEVISION, INC, d/b/a ADELPHIA CABLE
COMMUNICATIONS, MICHIGAN BELL
TELEPHONE COMPANY, d/b/a AMERITECH,
RICHARD C. KING, SUZANNE M. MARKUS,
STANDARD FEDERAL BANK, STEPHEN H.
MASLEN, SUSAN B. MASLEN, MAINSTREET
SAVINGS BANK, TIMOTHY DYKGRAAF,
NATIONAL CITY BANK OF
MICHIGAN/ILLINOIS, f/k/a FIRST OF
AMERICA BANK MICHIGAN NA, STEVEN W.
SCHAU, GINA C. SCHAU, FIFTH THIRD

UNPUBLISHED

April 8, 2003

No. 234838

Kalamazoo Circuit Court

LC No. 99-000074-CH

MORTGAGE COMPANY, f/k/a CIT FED MORTGAGE CORPORATION OF AMERICA, OLD KENT BANK SOUTHWEST, OLD KENT BANK & TRUST CO, FIRST CAPITAL MORTGAGE CORPORATION, LEWIS A. DODGSON, SALLY J. DODGSON, ARDIS J. DODGSON, EDNA M. DODGSON, JOHN A. MULLHOLLAND, FIRST FEDERAL OF MICHIGAN, f/k/a FIRST FEDERAL SAVINGS AND LOAN ASSOC, SCHOOL EMPLOYEES CREDIT UNION, COMERICA BANK, RUSSELL HARDING, MELANIE AZEVEDO, DONALD I. WHITE, RUTH WHITE, KEITH F. CONROY, MARGARET ANN SKAGGS HOGAN, JOHN B. HOGAN, GEORGE I. KEUBKE, BETTY I. KEUBKE, DAVID VELEY THOMSON, NANCY BROOKINS, a/k/a NANCY EVANS, THOMAS RENUART, BARBARA SWEAT, ALBERT A. SCHIAVONE, NOVA I. SCHIAVONE, OLD KENT MORTGAGE COMPANY, ROBERT J. THIESSEN, MARY LOU THIESSEN, KEVIN J. MILLER, ELIZABETH A. MILLER, BARBARA SMITH, JEFFARY A. RUE, MAC R. BEHNKE, SUSAN FRANKLIN BEHNKE, SUSAN SNUEPPEL, Trustee of the FREDERICK A. KENDALL LIVING TRUST, SARA BREDESEN, a/k/a SARA THOMSON, CARL S. SMITH, DANIEL CARL THOMSON, ELIZABETH SELBY, CHARLES JAMES SMITH, JANICE C. SELBY, ALFRED ASCH, NAOMI I. ASCH, TOD H. SELBY, AMERICAS WHOLESALE LENDER, MARINA FRANKLIN BEACH,

Defendants.

Before: Schuette, P.J., and Sawyer and Wilder, JJ.

PER CURIAM.

Plaintiffs appeal from an order of the circuit court granting summary disposition to defendants. We affirm.

Plaintiffs commenced this action to vacate a 50-foot portion of Green Road within the Franklin Beach plat in Ross Township, Kalamazoo County. The plat was recorded in 1903 and it is undisputed that Green Street was dedicated in the plat to public use. What is at issue is whether there is a genuine issue of material fact regarding whether the dedication was accepted

in a timely manner. Defendants point to a March 25, 1940, resolution of the Kalamazoo County Road Commission adopted in relation to the McNitt Act, 1931 PA 130, which indicated that all of Green Road had been accepted as a county road by that date. The trial court agreed that there was no genuine issue of material fact that Green Road had been accepted as a public road.

A valid dedication of land for a public purpose requires a recorded plat evidencing a clear intent to dedicate an area to public use and acceptance by the proper public authority. *Kraus v Dep't of Commerce*, 451 Mich 420, 424; 547 NW2d 870 (1996). It is undisputed that Green Road was properly offered for public use in the plat recorded in 1903. The dispute centers on the second prong, whether there was proper acceptance. Acceptance must be done in a timely manner. *Id.* at 425. Acceptance is regarded as timely if it is made before the plat owner or his successor withdraws the offer. *Id.* at 427. In the case at bar, there is no indication of a withdrawal of the dedication before acceptance. The *Kraus* Court further held that a resolution under the McNitt Act would serve as evidence of acceptance if it expressly identified the road at issue. In the case at bar, plaintiff contends that there are questions of fact as to whether all of Green Road was in actual use for public travel at the time of the 1940 resolution and that this presents an issue of fact as to whether all of Green Road was accepted as a county road. We disagree. The trial court properly concluded that the 1940 resolution and accompanying maps were persuasive evidence that there was no genuine issue of material fact on this question and, therefore, did not err in holding that the 1940 resolution constituted timely acceptance of Green Road. Accordingly, summary disposition was appropriately granted in favor of defendants.

Affirmed. Defendants may tax costs.

/s/ Bill Schuette
/s/ David H. Sawyer
/s/ Kurtis T. Wilder